

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-20 are pending. Applicants have amended Claims 1-3 and 5-20 to further clarify the claims. No new matter has been added.

The outstanding Office Action objects to Claims 2, 6, 11, and 16 because of informalities; rejects Claims 1-20 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention; rejects Claims 1, 6, 11, and 16 under 35 U.S.C. § 102(e) as anticipated by Foster et al. (U.S. Patent No. 6,493,678); and rejects Claims 2-5, 7-10, 12-15, and 17-20 under 35 U.S.C. § 103(a) as unpatentable over Foster.

Objections to Claims 2, 6, 11, and 16

In response to the objections to Claims 2, 6, 11, and 16 based on informalities, Applicants have amended these claims to redress the informalities, as suggested by the Office Action. Thus, Applicants respectfully request withdrawal of the objections to Claims 2, 6, 11, and 16.

Rejection under 35 U.S.C. § 112

The Office Action rejects Claims 1-20 under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended Claims 1-3 and 5-20 to more clearly define the present invention, as suggested by the Examiner. Applicants submit that Claims 1-20 fully comply with the requirements of 35 U.S.C. § 112, second paragraph, and accordingly request withdrawal of the rejection. However, if the Examiner disagrees, the

Examiner is invited to telephone the undersigned to identify mutually agreeable claim language.

Rejection under 35 U.S.C. § 102(e)

The Office Action rejects Claims 1, 6, 11, and 16 under 35 U.S.C. § 102(e) as anticipated by Foster. Applicants respectfully traverse the rejection.

To establish anticipation of Claim 1 under 35 U.S.C. § 102(e), the Office Action must show that each and every feature recited in Claim 1 is either explicitly disclosed or necessarily present in Foster. See M.P.E.P. § 2131. Claim 1, as amended, recites a distribution management device comprising, among other things, order information receiving means for receiving via a network first order information of merchandise to be sold via a first sales channel utilizing the network and receiving via the network second order information of said merchandise sold each time said merchandise is sold via a second sales channel that does not use the network.

The Office Action asserts that Foster discloses “order information receiving means (40) for receiving information of merchandise sold through first and second channels, wherein one channel utilizes the Internet, and the other does not (see col. 5, lines 41-48).” Applicants respectfully disagree.

First of all, Foster does not disclose order information receiving means. The Office Action cites reference number (40); however, (40) is a “distribution channel editor” that “allows the user to hierarchically recognize the brand distribution channels through which the product will be sold.” Col. 5, lines 41-44. Furthermore, Foster does not disclose receiving via a network first order information of merchandise to be sold via a first sales channel utilizing the network and receiving via the network second order information of said merchandise sold each time said merchandise is sold via a second sales channel not utilizing

the network. The Office Action cites col. 5, lines 41-48; however, the relationship between a channel for selling merchandise and a network for receiving order information is not disclosed. Foster does not disclose at least order information receiving means for receiving via a network first order information of merchandise to be sold via a first sales channel utilizing the network and receiving via the network second order information of said merchandise sold each time said merchandise is sold via a second sales channel that does not use the network.

Since Foster fails to disclose each and every one of the elements in the combination of Claim 1, Applicants respectfully submit that Foster does not anticipate Claim 1 under 35 U.S.C. § 102(e). Accordingly, Applicants respectfully request withdrawal of this rejection. Independent Claims 6, 11, and 16, although of different statutory class or of different scope, include recitations similar to those in Claim 1 discussed above. For at least the reasons given above with respect to Claim 1, Applicants respectfully request that the rejection of Claims 6, 11, and 16 under 35 U.S.C. § 102(e) be withdrawn. Accordingly, Applicants respectfully request that Claims 1, 6, 11, and 16 be allowed.

Rejection under 35 U.S.C. § 103(a)

The outstanding Office Action rejects Claims 2-5, 7-10, 12-15, and 17-20 under 35 U.S.C. § 103(a) as unpatentable over Foster. Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), each of three requirements must be demonstrated. First, Foster must teach or suggest each and every element recited in the claim. See MPEP § 2143. Second, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference in a manner resulting in the claimed invention. See id. Third, a reasonable probability of success must exist. See id.

The Office Action asserts that Foster teaches “all of the limitations of the claims” except “the step of stopping the supply of merchandise due to the sales debut of a new product.” Office Action, pages 8-9. Applicants respectfully disagree.

Claims 2-5, 7-10, 12-15, and 17-20 depend on Claims 1, 6, 11, or 16. As discussed above with respect to Claims 1, 6, 11, and 16, Foster does not teach or suggest each and every element recited in Claims 1, 6, 11, and 16. For example, Foster does not teach or suggest at least order information receiving means for receiving via a network first order information of merchandise to be sold via a first sales channel utilizing the network and receiving via the network second order information of said merchandise sold each time said merchandise is sold via a second sales channel that does not use the network, as recited in Claim 1 and as similarly recited in Claims 6, 11, and 16. In view of the failure of Foster to teach or suggest all features of Claims 1, 6, 11, and 16, Applicants submit that Foster does not render Claims 1, 6, 11, and 16 obvious under 35 U.S.C. § 103(a). Since Claims 2-5, 7-10, 12-15, and 17-20 depend on Claims 1, 6, 11, or 16, Applicants respectfully request that the rejection of Claims 2-5, 7-10, 12-15, and 17-20 under 35 U.S.C. § 103(a) be withdrawn and Claims 2-5, 7-10, 12-15, and 17-20 be allowed.

Conclusion

In view of the foregoing remarks, Applicants respectfully submit that each and every one of Claims 1-20 defines patentable subject matter, and that the application is in condition for allowance. Applicants respectfully request the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)